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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION
830 PUNCHBOWL ST RM 209
HONOLULU HI 96813

Claimant	STANLEY R. TSUJI 121 BANYAN DRIVE, APT. 514 HILO, HI 96720	DECISION 90 MAR 9 A 8:37
Employer	STATE OF HAWAII DEPT OF CORRECTIONS PERSONNEL OFFICE SAFETY UNIT GOLD BOND BUILDING 677 ALA MOANA BLVD., SUITE 700 HONOLULU, HI 96813	
Insurer	STATE OF HAWAII DEPARTMENT OF PERSONNEL SERVICES STATE WORKERS' COMPENSATION DIVISION 345 QUEEN STREET, 5TH FLOOR HONOLULU, HI 96813	

Case No: 18910156
D/A: NOVEMBER 13, 1987
SSN: 576-92-0977

Such investigation of the above-entitled matter having been made as he deems necessary, the Director makes the following.

FINDING OF FACTS

On November 13, 1987, claimant was in the employ of the above-named employer; on said date, claimant sustained a personal injury to his respiratory system by accident arising out of and in the course of his employment; said injury was not caused by claimant's willful intention to injure himself or another nor by his intoxication. No temporary total disability resulted from this injury. Permanent partial disability and disfigurement, if any, shall be determined at a later date. The average weekly wages of the claimant were $466.09.

A review of the records indicates claimant filed an Employee's Claim for Workers' Compensation Benefits (WC-5) dated July 11, 1989 in response to an Employer's Report of Industrial Injury (WC-1) dated June 13, 1989, which denied liability for this injury. A hearing on the above-captioned matter was conducted on January 19, 1990.

Claimant states he first began working at the jail in December of 1984. He noticed the smell of cigarette smoke, which is the same now as it was then. Within approximately two months, claimant began experiencing symptoms such as runny nose, burning eyes, etc. These symptoms, however, did not cause any lost time from work. From August 1985 to September 1986, claimant received training and worked on Oahu and on Maui. While on Maui, which had the same type of closed air conditioning as Hilo, claimant did not experience any difficulties. In September 1986, claimant returned to Hilo where he continues employment at the jail to the present. Claimant was not aware he sustained any lung damage until May of 1989 when he sought medical care for his symptoms from Craig Kadooka, M.D. The doctor diagnosed allergic rhinitis, possibly related to cigarette smoke exposure, and ordered a pulmonary function test (PFT) which revealed evidence of obstructive airway disease. Claimant states his pre-employment physical in 1984 did not reveal any evidence of a chronic condition, such as bronchitis, and his PFT was normal. At present, Dr. Kadooka reports his PFT is abnormal. Claimant was not aware he had sustained any lung damage until May 1989 and opines the injury must have occurred between 1984

and this date. On November 13, 1987 and again on June 5, 1989, claimant informed employer of his concern and his belief the ventilation system and the cigarette smoke were causing his symptoms. Claimant suggested certain modifications to the facility to improve the situation.

Employer states the claim is barred by the Statutes of Limitation since claimant did not file claim within two years of the manifestation of symptoms, which occurred in 1985, as claimant testified. Alternatively, employer states claimant's symptoms are merely a temporary aggravation of his long-standing , preexisting condition. The medical records of Edward Lau, M.D. reveal claimant's history of upper respiratory infection (URI's), pharangitis, and rhinitis dating back to October 1966. Dr. Kadooka, Dr. Lau, and Roy Adaniya, M.D., diagnose claimant's present condition as allergic rhinitis and bronchitis, symptoms claimant has experienced even prior to his employment.

First, in addressing employer's Statute objection, we note there is no dispute claimant began experiencing symptoms approximately two months after starting work in December 1984. Also undisputed is the fact claimant notified employer on November 13, 1987, by letter dated November 8, 1987, of his belief the ventilation system and cigarette smoke were causing his symptoms. In the case of Demond vs. University of Hawaii, 54 Haw. 98 (1972), the court approved the general rule on excuses for late notice or claim established by Profession Larson which states:

> The time period for notice or claim does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable character of his injury or disease.
>
> 3 Larson, Workmen's Compensation Law, Section 78.41 (1970)

As claimant testified, he worked on Oahu and on Maui between August 1985 and September 1986. Claimant experienced no difficulties while away from Hilo but, after his return, he again

began to experience respiratory problems. The claim for compensation was later filed, on July 11, 1989, within two years of claimant's notification to employer on November 13, 1987 of his belief his symptoms were caused by work. Thus, the claim for compensation was filed within two years of claimant's recognition of the probable compensable nature of his injury. The five-year limitation is not an issue. Accordingly, we find the claim is not barred by the Statutes of Limitations. Reviewing the medical evidence on file, we note the agreement of the physicians not only as to the diagnosis of claimant's condition, but also to the probable etiology. Among the records on file is a June 1, 1989 investigation report to employer from the Safety and Health Branch of the Department of Labor, Division of Occupational Health and Safety (DOSH).This report confirmed carbon dioxide levels in the jail's multi-purpose room were higher than recommended by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers, Inc. (ASHRAE). Although not a violation of Hawaii's standards, it was noted this condition could cause "more complaints alleging headaches, fatigue, and eye and throat (mucous membrane) irritation, not so much due to the carbon dioxide itself but due to the presence of other contaminants associated with inadequate amounts of fresh air." Carbon monoxide levels were zero, indicating cigarette smoking was not a problem. The kitchen and hallway air supply ducts showed condensate (water droplets) and had fungi (mold and mildew) growing on them. DOSH noted spores from fungi had been shown to cause allergies similar to respiratory infection in sensitive individuals. Certain changes and modifications were recommended to alleviate the problem. From all of the foregoing, it is clear the air conditioning/ventilation system, if not cigarette smoking, could have caused the symptoms of which claimant complained and which his physicians diagnosed. Additionally, there is no medical evidence to the contrary. Accordingly, we find the claim compensable. Whether claimant's condition is temporary or permanent, however, is unknown and any determination in that regard is deferred.

Thereupon the Director makes the following

DECISION

1. Pursuant to Sections 386-21 and 386-26, HRS, said employer shall pay for such medical care, services and supplies as the nature of the injury may require.

2. No temporary disability resulted from this accident.

3. The matters of permanent disability and disfigurement, if any, shall be determined at a later date.

BY ORDER OF THE DIRECTOR, MARCH 9, 1990.

/s/ Clyde Imada,
for Administrator

APPEAL: This decision may be appealed by filing a written notice of appeal with the Director of Labor and Industrial Relations or his county representative within twenty days after a copy of this decision has been sent.